

APPLICATION FOR NOMINATION TO THE 7th Judicial Circuit COURT

Instructions: *Respond fully to the questions asked below. Please make all efforts to include your full answer to each question in this document. You may attach additional pages, as necessary, however it is discouraged. In addition to the application, you must provide a recent color photograph to help identify yourself.*

Full Name: Frank Merrill Talbot, II **Social Security No.:**

Florida Bar No.: 024661 **Date Admitted to Practice in Florida:** 10/7/1994

1. Please state your current employer and title, including any professional position and any public or judicial office you hold, your business address and telephone number.

United States Attorney's Office, Middle District of Florida
Assistant United States Attorney
Chief, Jacksonville Division
300 N. Hogan Street
Suite 700
Jacksonville, Florida 32202
(904) 301-6284

2. Please state your current residential address, including city, county, and zip code. Indicate how long you have resided at this location and how long you have lived in Florida. Additionally, please provide a telephone number where you can be reached (preferably a cell phone number), and your preferred email address.

3. State your birthdate and place of birth.

Macon, Georgia

4. Are you a registered voter in Florida (Y/N)?

Yes

5. Please list all courts (including state bar admissions) and administrative bodies having special admissions requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have ever been suspended or resigned. Please explain the reason for any lapse in membership.

Florida Bar October 7, 1994

US District Court, MDL 1994

Georgia Bar June 9, 1994 (inactive)

I have never been suspended.

6. Have you ever been known by any aliases? If so, please indicate and when you were known by such alias.

No

EDUCATION:

7. List in reverse chronological order each secondary school, college, university, law school or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, the date the degree was received, class standing, and graduating GPA (if your class standing or graduating GPA is unknown, please request the same from such school).

University of Florida
LL.M. in Taxation 1995
3.5/4.0

Mercer University
J.D. 1994
88/100
Rank 21 of 122
American Jurisprudence Award in Evidence

Georgia Institute of Technology
B.S. in Management 1990
2.7/4.0

8. List and describe any organizations, clubs, fraternities or sororities, and extracurricular activities you engaged in during your higher education. For each, list any positions or titles you held and the dates of participation.

Kappa Alpha Order 1986-1990

Varsity Cheerleader 1987-1989

I was always involved in organizing and playing intramural sports in law school. I organized and coached the 94-95 "Tax Law" softball team at UF.

EMPLOYMENT:

9. List in reverse chronological order all full-time jobs or employment (including internships and clerkships) you have held since the age of 21. Include the name and address of the employer, job title(s) and dates of employment. For non-legal employment, please briefly describe the position and provide a business address and telephone number.

United States Attorney's Office, Middle District of Florida
Assistant United States Attorney
300 N. Hogan Street
Suite 700
Jacksonville, Florida 32202
June 2002 – present

State Attorney's Office, 10th Judicial Circuit
Assistant State Attorney
255 N. Broadway Ave
Bartow, Florida 33801
December 1996 – May 2002

Brant, Moore, MacDonald & Wells
Associate Attorney
August 1995 – December 1996
Summer Intern
June – August 1994
June – August 1992

Lazard Freres & Company
30 Rockefeller Center
New York, NY 10112
Summer Intern

I worked in the private client's group for their in-house legal counsel. I reviewed legal documents related to trusts and pensions. I also assisted financial advisors with legal issues and research.

June – August 1993

Design Containers
2913 Westside Blvd
Jacksonville, FL 32209
Summer Intern

Design manufactures cylindrical containers for roofing asphalt. I assisted with improvements to inventory control and logistics. I worked closely with the warehouse supervisor.
May – August 1991

Aspen Skiing Company
Snowmass Village, CO 81612
Ski Lift Operator
January – April 1991

Georgia Institute of Technology
North Avenue
Atlanta, GA 30332
Statistics Teaching Assistant
June – August 1990

- 10.** Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

I presently serve as the Chief Assistant United States Attorney for the Jacksonville Division. In that role, I supervise fourteen criminal division AUSAs and the office manager. We cover twelve counties in Northeast Florida, including St. Johns, Putnam and Flagler in the Seventh Circuit. My role as office chief covers everything requiring supervisory approval for the criminal division AUSAs. For example, supervisory review and approval is required for all indictments, search warrants, arrest warrants, legal pleadings and court filings. I am directly responsible for approving the initiation of all Grand Jury investigations. I am also directly responsible for reviewing and approving all memos going to the US Attorney or the Attorney General's Office.

I work closely with law enforcement, both local and federal, to investigate violations of federal law. This includes close coordination with federal and local agency heads. I'm involved in frequent meetings with federal task forces as the representative from our office. I continue to maintain an active case load, although smaller than our line AUSAs, and I handle most of my own post-conviction matters, including violations of supervised release and compassionate release responses. I have prosecuted forty-two felony jury trials as an AUSA. I am a Project Safe Neighborhoods Coordinator, District Election Officer, and Grand Jury Coordinator. I have served as the office chief since 2017. I have previously served as Deputy Chief for Jacksonville and Senior Litigation Counsel and Criminal Division AUSA. I also serve as an Instructor at the National Advocacy Center in Columbia, SC.

11. What percentage of your appearance in court in the last five years or in the last five years of practice (include the dates) was:

| | Court | | Area of Practice |
|----------------------|--------------|----------|------------------|
| Federal Appellate | _____ % | Civil | _____ % |
| Federal Trial | <u>100</u> % | Criminal | <u>100</u> % |
| Federal Other | _____ % | Family | _____ % |
| State Appellate | _____ % | Probate | _____ % |
| State Trial | _____ % | Other | _____ % |
| State Administrative | _____ % | | |
| State Other | _____ % | | |
| | | | |
| TOTAL | <u>100</u> % | TOTAL | <u>100</u> % |

If your appearance in court the last five years is substantially different from your prior practice, please provide a brief explanation:

12. In your lifetime, how many (number) of the cases that you tried to verdict, judgment, or final decision were:

| | | | |
|--------------|-----------|------------------------|------------|
| Jury? | <u>95</u> | Non-jury? | <u>20+</u> |
| Arbitration? | <u>0</u> | Administrative Bodies? | <u>0</u> |
| Appellate? | <u>0</u> | | |

13. Please list every case that you have argued (or substantially participated) in front of the United States Supreme Court, a United States Circuit Court, the Florida Supreme Court, or a Florida District Court of Appeal, providing the case name, jurisdiction, case number, date of argument, and the name(s), e-mail address(es), and telephone number(s) for opposing appellate counsel. If there is a published opinion, please also include that citation.

N/A

14. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended, or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was

taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No

15. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain full.

No

16. For your last six cases, which were tried to verdict or handled on appeal, either before a jury, judge, appellate panel, arbitration panel or any other administrative hearing officer, list the names, e-mail addresses, and telephone numbers of the trial/appellate counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

I have included the last six jury trials where I was sole or lead counsel. Other than McMillar, which was in the Southern District of Georgia, all trials were in the Middle District of Florida, Jacksonville Division.

1. US v. Victor McMillar
4:23-cr-90
(SDGA)
Defense Counsel: Tina Maddox (912) 282-7030; tina@tinamaddoxlaw.com
Co-Counsel: AUSA Rachel Lasry (904) 349-9098; Rachel.lasry@usdoj.gov
2. US v. Timothy Crowe
3:23-cr-138-WWB-LLL
Defense Counsel: Scott Schmidt & Lisa Call (904) 232-3039; scott_schmidt@fd.org;
lisa_call@fd.org
3. US v. Jamaal Hameen
3:18-cr-115-J-34JBT
Defense Counsel: Doug Clifton (904) 399-1609; dhc@edwardsragatz.com
Co-Counsel: AUSA David Mesrobian (904) 349-9098; david.mesrobian@usdoj.gov
4. US v. Raimundo Hogan
3:16-cr-139-J-32JRK
Defense Counsel: Susan Yazgi (904) 303-0230 (retired FPD)
Co-Counsel: AUSA Jason Mehta; (904) 888-0370; jmehta@foley.com
5. US v. Willie Daniels
3:10-cr-191-J-32MCR
Defense Counsel: Noel Lawrence (904) 535-0380; nglawren@lpnlaw.com

6. US v. Antwan Cameron
3:12-cr-33-J-MMH-JRK
Defense Counsel: Paul Shorstein (904) 257-8579; paul@pajcic.com

17. For your last six cases, which were either settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

1. US v. Terrence Jennings
3:24-cr-215-WWB-MCR
Defense Counsel: Waffa Hanania (904) 232-3039
2. US v. Andres Mejia
3:24-cr-236-WWB-LLL
Defense Counsel: Lisa Call (904) 232-3039
3. US v. Tocorey Gibbs
3:24-cr-203-MMH-LLL
Defense Counsel: Noel Lawrence (904) 535-0380
4. US v. Jason Harris
3:23-cr-136-MMH-MCR
Defense Counsel: Noel Lawrence (904) 535-0380
5. US v. Mark Dennison
3:23-cr-182-TJC-SJH
Defense Counsel: Waffa Hanania (904) 232-3039
6. US v. Jamie Thompson
3:23-cr-95-TJC-PDB
Defense Counsel: Kathryn Sheldon (904) 232-3039

18. During the last five years, on average, how many times per month have you appeared in Court or at administrative hearings? If during any period you have appeared in court with greater frequency than during the last five years, indicate the period during which you appeared with greater frequency and succinctly explain.

Average about 10 court appearances a month. Prior to becoming Chief AUSA for Jacksonville in 2017, I was typically in court daily.

19. If Questions 16, 17, and 18 do not apply to your practice, please list your last six major transactions or other legal matters that were resolved, listing the names, e-mail addresses, and telephone numbers of the other party counsel.

N/A

20. During the last five years, if your practice was greater than 50% personal injury, workers' compensation or professional malpractice, what percentage of your work was in representation of plaintiffs or defendants?

N/A

21. List and describe the five most significant cases which you personally litigated giving the case style, number, court and judge, the date of the case, the names, e-mail addresses, and telephone numbers of the other attorneys involved, and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant.

US v. Victor McMillar

4:23-cr-90

R. Stan Baker

United States District Judge

October 2024

Defense Counsel: Tina Maddox (912) 282-7030; tina@tinamaddoxlaw.com

Co-Counsel: AUSA Rachel Lasry (904) 349-9098; Rachel.lasry@usdoj.gov

I prosecuted McMillar for two counts of felon in possession of a firearm and ammunition, but this was actually a double homicide. McMillar murdered two people in Savannah, GA in November 2018. The first murder was on November 3. McMillar shot and killed Donte Chisholm and shot and severely injured Desire Chisholm, Donte's wife. On November 5, McMillar shot and killed Jamal Johnson who had witnessed the Chisholm shooting. McMillar was indicted by the Chatham County DA's office for two counts of first-degree murder. His state trial was in October 2023. He was acquitted. The US Attorney's Office for the Southern District of Georgia indicted McMillar in November 2023 and then recused their office because of a conflict. Main Justice assigned our office, and I took over the case. The evidence was circumstantial, and we worked with ATF to take additional investigative steps to find new evidence. That effort paid off. Through search warrants on cell phones and iCloud accounts, we were able to find additional evidence against McMillar. We also added a cell phone expert from ATF who helped analyze McMillar's cell phone activity, which tracked McMillar near the scene of the second murder. The trial started on October 21, 2024. We presented evidence from the prior trial along with the additional evidence located from the search warrants. We also added additional expert witnesses in DNA, cell phone forensics and tracking, firearm operation, firearm ballistics, acoustic shot location technology, and firearm nexus. After four days in trial, the jury convicted McMillar, as charged, specifically finding that

he possessed the ammunition used in both murders. McMillar was sentenced to 20 years in prison, the statutory maximum. His appeal is pending before the Eleventh Circuit.

US v. Steven Buemel

3:11-cr-315-34MCR

Marcia Morales Howard

United States District Judge

September 13, 2012

Defense Counsel: James Burke (904) 448-2825; jhburke@comcast.net and Maurice Grant (904) 307-0420; ii.grant@comcast.net (both retired from FPD)

Beumel was a radiology technician stealing fentanyl from patients at the Mayo Clinic and infecting them with Hepatitis C. One patient died as a result. I worked with agents from FBI and FDA to investigate this case through a lengthy Grand Jury process. This remains the most complex investigation of my career. We used the genetics of the virus to prove that Beumel was guilty. Medical experts from Mayo Clinic and the CDC in Atlanta were central to our case. We spent months preparing for trial. Beumel pled straight up just days before jury selection and was sentenced to 30 years. Beumel's conviction was affirmed at *US v. Beumel*, 522 F. App'x 623 (11th Cir. 2013). The Podcast, "This is Criminal," has an episode featuring the Beumel case. <https://thisiscriminal.com/episode-176-the-red-flag-11-5-21/>.

US v. Art Picklo

3:04-304-cr-J25TEM

US District Court

Henry Lee Adams

United States District Judge

June 2005

Defense Counsel: Ron Maxwell (904) 713-3817; rwmax70@gmail.com

Co-Counsel: James Klindt, Senior United States Magistrate Judge (904) 360-1520;

kara_wood@flmd.uscourts.gov

Picklo was an IRS Task Force Officer (TFO) who robbed and shot the target of an IRS federal investigation. He was prosecuted by the State Attorney's Office and found not guilty. After the acquittal, I worked with FBI agents to investigate and indict Picklo for Hobbs Act Robbery, Civil Rights Violation by Law Enforcement, Attempting to Kill a Witness, and Using a Firearm During a Crime of Violence. Picklo's trial spanned three weeks in late May and early June of 2005. I was co-counsel with Judge Klindt. Picklo was convicted and sentenced to 40 years. Picklo's conviction was affirmed at *US v. Picklo*, 190 F. App'x 887 (11th Cir. 2006).

Florida v. Dean Townsend

1995-CF-4987

10th Judicial Circuit

Circuit Judge J. Michael McCarthy

September 2001

Defense Counsel: Clint Curtis and Raymond Rafool (786) 512-9706; raymond@rafool.com

Townsend was a DUI manslaughter case. The trial lasted two weeks. The trial was significant for the length and complexity of the case. The defense attorneys attacked causation and blood alcohol testing, using their own accident reconstruction expert and chemist. This case was also followed closely by the media. Townsend was convicted of DUI manslaughter.

Florida v. Darwin Klinger

1999-CF-5439

Judge Randall G. McDonald

10th Judicial Circuit

September 2000

Defense Counsel: Wayne Timmerman (813) 289-1088; timmerws@fljud13.org

This was a DUI manslaughter and tampering with evidence trial involving a victim who refused a blood transfusion for religious reasons. The defense focused on the victim's treatment at the hospital where he refused a transfusion during an operation to amputate his legs, which had been crushed in the crash caused by Klinger. Ultimately the jury rejected this defense and convicted Klinger as charged. His case was affirmed on appeal by the Second Circuit. *Klinger v. State*, 816 So.2d 697 (Fla. 2d DCA 2002).

22. Attach at least two, but no more than three, examples of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach a writing sample for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

I drafted both responses. I did pull some portions from our brief bank.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE

23. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved, the dates of service or dates of candidacy, and any election results.

No

24. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name(s) of the commission, the approximate date(s) of each submission, and indicate if your name was certified to the Governor's Office for consideration.

No

25. List any prior quasi-judicial service, including the agency or entity, dates of service, position(s) held, and a brief description of the issues you heard.

None

26. If you have prior judicial or quasi-judicial experience, please list the following information:

- (i) the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance;
- (ii) the approximate number and nature of the cases you handled during your tenure;
- (iii) the citations of any published opinions; and
- (iv) descriptions of the five most significant cases you have tried or heard, identifying the citation or style, attorneys involved, dates of the case, and the reason you believe these cases to be significant.

N/A

- 27.** Provide citations and a brief summary of all of your orders or opinions where your decision was reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, attach copies of the opinions.

N/A

- 28.** Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, attach copies of the opinions.

N/A

- 29.** Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give the date, describe the complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.

N/A

- 30.** Have you ever held an attorney in contempt? If so, for each instance state the name of the attorney, case style for the matter in question, approximate date and describe the circumstances.

N/A

- 31.** Have you ever held or been a candidate for any other public office? If so, state the office, location, dates of service or candidacy, and any election results.

No

NON-LEGAL BUSINESS INVOLVEMENT

- 32.** If you are now an officer, director, or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

N/A

- 33.** Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, explain and provide dates. If you received any compensation of any kind outside the practice of law during this time, please list the amount of compensation received.

No

POSSIBLE BIAS OR PREJUDICE

- 34.** The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you, as a general proposition, believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

I would not have difficulty hearing any type of case.

PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES

- 35.** List the titles, publishers, and dates of any books, articles, reports, letters to the editor, editorial pieces, or other published materials you have written or edited, including materials published only on the Internet. Attach a copy of each listed or provide a URL at which a copy can be accessed.

N/A

- 36.** List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. Provide the name of the entity, the date published, and a summary of the document. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed.

N/A

- 37.** List any speeches or talks you have delivered, including commencement speeches, remarks, interviews, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place they were delivered, the sponsor of the presentation, and a summary of the presentation. If there are any readily available press reports, a transcript or recording, please attach a copy or provide a URL at which a copy can be accessed.

I have delivered many speeches over the past thirty years. None have been political. Most have been directly related to my AUSA position. I do not have a complete list of all dates and places, but I will describe the types of speeches I have given.

I have delivered speeches to middle and high school students across Northeast Florida as part of my role as Project Safe Neighborhoods Coordinator. These speeches focused on our PSN violence

reduction strategy. The overall theme of these speeches encouraged students not to use firearms illegally, to stay away from drug use and violent crime, and to make the most of their education. Also, through PSN I have been a regular speaker at re-entry programs in Florida prisons. My message to those inmates about to be released was to never pick up a gun again, find a job and stay off drugs. I also encouraged them to take advantage of NGO assistance programs designed to help them succeed outside of prison. From my involvement in these PSN programs, I was recognized by the Federal Bar Association in 2020.

<https://www.jaxdailyrecord.com/news/2020/dec/21/federal-bar-presents-spirit-of-giving-awards/>

As mentioned previously, I was interviewed for a podcast related to the Beumel case.

<https://thisiscriminal.com/episode-176-the-red-flag-11-5-21/>

I frequently lecture law students as part of the Federal Bar Association's Summer Series program. My lecture topic is Federal Grand Jury practice.

https://www.jaxfedbar.org/announcements/#_2025_summer_series

I have given lectures to various civic organizations. This includes rotary clubs and churches. The topic of these was also related to PSN.

I have given remarks at two judicial investitures, Judge John Guy on the Fourth Circuit and Judge Mitch Bishop in Union County.

As indicated below in #38, I have taught and lectured at law schools and presented CLE training.

- 38.** Have you ever taught a course at an institution of higher education or a bar association? If so, provide the course title, a description of the course subject matter, the institution at which you taught, and the dates of teaching. If you have a syllabus for each course, please provide.

University of Florida College of Law

Guest lecturer for Professor Wolking's Prosecution Clinic Class. Two-hour presentation and case study of *US v. Picklo*. I have been presenting this lecture each semester since 2019.

Florida Coastal School of Law

Mock trial team coach 2005-2009. Coached teams in NTC mock trial competitions at Emory, University of Florida, FAMU and Florida State.

Guest lecturer for Forensic Evidence, Criminal Procedure and Grand Jury Practice classes.

National Advocacy Center

Instructor in the Basic Trial Advocacy Class. I have been an instructor six times since 2019. My lecture topics have included pre-trial witness preparation and jury selection.

Continuing Legal Education

I have presented ten CLE programs for State Attorney's Offices in the Second, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth and Thirteenth Circuits. I have also presented two CLE training for the Jacksonville Federal Bar Association. I was a panelist for a Professionalism Symposium for the Jacksonville Bar Association.

Law Enforcement Training

I have served as an Instructor at the Federal Law Enforcement Training Center in Brunswick for ATF and the United States Forestry Service.

39. List any fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement. Include the date received and the presenting entity or organization.

Office Award for Contribution to US v. Karl Waldon Trial
United States Attorney's Office
2002

Outstanding Service and Distinguished Service Award
Federal Law Enforcement Officers Association
2005

Recognition for Exemplary Service as Deputy Chief
United States Attorney's Office
2009

Outstanding Interagency Coordination for PSN and Gun Crime
Annual Office Award
United States Attorney's Office
2010

Certificate of Appreciation
Jacksonville Sheriff John Rutherford
2012

FBI Director's Certificate
FBI Director Robert Mueller
2012

Spirit of Giving Award
Federal Bar Association
2020

AUSA of the Year
ATF, Tampa Field Division
2022

40. Do you have a Martindale-Hubbell rating? If so, what is it and when was it earned?

Not to my knowledge

41. List all bar associations, legal, and judicial-related committees of which you are or have been a member. For each, please provide dates of membership or participation. Also, for each indicate any office you have held and the dates of office.

Jacksonville Bar Association; 2002 to present

Federal Bar Association; 2002 to present

United States Magistrate Judge Merit Selection Committee 2021

Federal Bar Association Annual Ralph W. "Buddy" Nimmons, Jr. Federal Practice Seminar, Closing Argument Presentation 2007 & 2008

Federal Bar Association Summer Series, Grand Jury Lecture 2018-2025

42. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in the previous question to which you belong, or to which you have belonged since graduating law school. For each, please provide dates of membership or participation and indicate any office you have held and the dates of office.

Northeast Florida HIDTA
Executive Board Chairman
2022

Mandarin Presbyterian Church
Elder – 2024-present
Trustee – 2021-2024

43. Do you now or have you ever belonged to a club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion (other than a church, synagogue, mosque or other religious institution), national origin, or sex (other than an educational institution, fraternity or sorority)? If so, state the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No

44. Please describe any significant pro bono legal work you have done in the past 10 years, giving dates of service.

As a federal prosecutor my pro bono legal work is somewhat limited. I have been actively engaged in numerous community outreach efforts as a Project Safe Neighborhoods Coordinator for the Middle District of Florida. As I mentioned previously, this includes speaking to students at schools across Northeast Florida. Specifically, I have given PSN presentations at the following schools within the Seventh Circuit: Pacetti Bay Middle; Sebastian Middle; Flagler Everest; Fruit Cove Middle; Hastings Youth Ranch; Gaines School; Beasley Middle; Julington Creek Elementary; Flagler Palm Coast High School; Interlachen High School; Crescent City High School; Creekside High School; Bartram Trail High School; Neese High School; St. Augustine High School. I also participate in prison re-entry programs at Lawtey CI and Baker Re-Entry Center and with the Jacksonville Sheriff's Office.

45. Please describe any hobbies or other vocational interests.

I enjoy paddleboarding off Ponte Vedra Beach, boating in the St. Johns River, and spending time with family and friends.

46. Please state whether you have served or currently serve in the military, including your dates of service, branch, highest rank, and type of discharge.

N/A

47. Please provide links to all social media and blog accounts you currently maintain, including, but not limited to, Facebook, Twitter, LinkedIn, and Instagram.

I have a LinkedIn account that I rarely use.

<https://www.linkedin.com/in/frank-talbot-2b66911a/>

FAMILY BACKGROUND

48. Please state your current marital status. If you are currently married, please list your spouse's name, current occupation, including employer, and the date of the marriage. If you have ever been divorced, please state for each former spouse their name, current address, current telephone number, the date and place of the divorce and court and case number information.

Cathleen Arnold Talbot
Assistant State Attorney, 4th Circuit
January 24, 1998

49. If you have children, please list their names and ages. If your children are over 18 years of age, please list their current occupation, residential address, and a current telephone number.

CRIMINAL AND MISCELLANEOUS ACTIONS

- 50.** Have you ever been convicted of a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

I have a misdemeanor disorderly conduct conviction from Milledgeville, GA. The conviction was in February 1993. I was fined \$100 which was paid in 1993. I do not have the case number; I was arrested and received a citation, and I have been unable to find any records associated with the case.

- 51.** Have you ever pled nolo contendere or guilty to a crime which is a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

See # 50, although I have no recollection of my actual plea.

- 52.** Have you ever been arrested, regardless of whether charges were filed? If so, please list and provide sufficient details surrounding the arrest, the approximate date and jurisdiction.

See #50

- 53.** Have you ever been a party to a lawsuit, either as the plaintiff, defendant, petitioner, or respondent? If so, please supply the case style, jurisdiction/county in which the lawsuit was filed, case number, your status in the case, and describe the nature and disposition of the matter.

I have been sued by a few criminal defendants. I found the following two cases, but it is possible that there are others that I don't remember. These cases were handled by our civil division AUSAs with little involvement from me.

Case No. 2018-CA-006314. Jamaal Hameen sued me and several other government officials, including the United States Attorney and United States District Judge, for monetary damages arising from his criminal prosecution. The Duval County Case was removed to United States District Court, where it was dismissed in case 3:19-cv-00105-TJC-PDB.

Case No. 3:12-cv-1059-TJC-JBT. Anthony Cooper sued me and several other government officials. He sought to have us investigated for various criminal charges, including conspiracy to commit murder. He also sought certain written records and video recordings. The case was dismissed.

- 54.** To your knowledge, has there ever been a complaint made or filed alleging malpractice as a result of action or inaction on your part?

No

- 55.** To the extent you are aware, have you or your professional liability carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the name of the client(s), approximate dates, nature of the claims, the disposition and any amounts involved.

No

- 56.** Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, provide the particulars of each finding or investigation.

No

- 57.** To your knowledge, within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers, clients, or the like, ever filed a formal complaint or accusation of misconduct including, but not limited to, any allegations involving sexual harassment, creating a hostile work environment or conditions, or discriminatory behavior

against you with any regulatory or investigatory agency or with your employer? If so, please state the date of complaint or accusation, specifics surrounding the complaint or accusation, and the resolution or disposition.

No

58. Are you currently the subject of an investigation which could result in civil, administrative, or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation, and the expected completion date of the investigation.

No

59. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you, this includes any corporation or business entity that you were involved with? If so, please provide the case style, case number, approximate date of disposition, and any relevant details surrounding the bankruptcy.

No

60. In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.

No

61. Please explain whether you have complied with all legally required tax return filings. To the extent you have ever had to pay a tax penalty or a tax lien was filed against you, please explain giving the date, the amounts, disposition, and current status.

N/A

HEALTH

62. Are you currently addicted to or dependent upon the use of narcotics, drugs, or alcohol?

No

63. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism? If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.] Please describe such treatment or diagnosis.

No

- 64.** In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner: experiencing periods of no sleep for two or three nights, experiencing periods of hyperactivity, spending money profusely with extremely poor judgment, suffering from extreme loss of appetite, issuing checks without sufficient funds, defaulting on a loan, experiencing frequent mood swings, uncontrollable tiredness, falling asleep without warning in the middle of an activity. If yes, please explain.

No

- 65.** Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner? If yes please explain the limitation or impairment and any treatment, program or counseling sought or prescribed.

No

- 66.** During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, provide full details as to court, date, and circumstances.

No

- 67.** During the last ten years, have you unlawfully used controlled substances, narcotic drugs, or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal or State law provisions.)

No

- 68.** In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned, or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs, or illegal drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action

No

- 69.** Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? If so, please state the date you were requested to submit

to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal, and the reason why you refused to submit to such a test.

No

70. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

No

SUPPLEMENTAL INFORMATION

71. Describe any additional education or experiences you have which could assist you in holding judicial office.

I believe my training within the Department of Justice was a unique additional educational opportunity. I received training both within the office and at our National Advocacy Center (NAC) in Columbia, South Carolina. In 2019, I was selected to be an instructor in our Basic Criminal Trial Advocacy (BCTA) course at the NAC. I have now been an instructor in six BCTA classes. BCTA is a two-week program designed to teach new AUSAs from across the country how to prosecute criminal trials. The instructors often role play the position of judge while students practice their openings, directs, cross exams and closings. I am also a lecturer at BCTA. My lecture topics include pre-trial witness preparation and jury selection.

Most prosecutors don't have an LL.M. in tax. I practiced as a tax associate earlier in my career, with a focus on business and estate planning. This additional educational training and experience will allow me to adjust quickly to any circuit docket, especially probate and guardianship.

My position as office chief is an additional experience that I believe will translate well into the role of Circuit Judge. I am constantly reviewing the work of our AUSAs in the approval process. This often leads to great discussions about improving an indictment or pleading. This also requires that I read a tremendous volume of material, spot issues and potential problems, and do all this in a compressed time frame. As I type this, my inbox has three prosecution memos with indictment packages and four plea agreements. These are matters I must turn around with efficiency and with the legal scrutiny that is expected of Department of Justice lawyers.

72. Explain the particular contribution you believe your selection would bring to this position and provide any additional information you feel would be helpful to the Commission and Governor in evaluating your application.

I have dreamed of serving as a judge from the first day I walked into Polk County Judge Michael Raiden's courtroom almost thirty years ago. I have had the honor and privilege to represent the State of Florida and the United States. My classroom has been both state and federal courtrooms. I was blessed to receive instruction from some of the finest judges in the country, in my biased opinion. There have been difficult and challenging trials and unforgettable moments. I remember

my first jury trial before the late United States District Judge Ralph W. Nimmons. Judge Nimmons was the embodiment of patience and integrity. Sadly, it was the last jury trial of his career. I tried the first jury trial in the Bryan Simpson Courthouse before Senior United States District Judge Henry Lee Adams. I learned valuable lessons about civility during contentious drug trafficking trials before Senior United States District Judge Harvey E. Schlesinger. I presented wire taps and search warrants in chambers, argued suppression hearings, defended law enforcement seizures, and argued for justice during emotional sentencing hearings. This has been my educational training for the role of judge.

I have enjoyed every moment of being a prosecutor, but I am eager and excited to continue my public service as a Circuit Judge. While I have loved federal court, my roots are in state court, it will always be home.

I also would be nowhere without my incredible family. I'm not sure if appropriate for this application but let me share some personal information about the lawyers in my family who have influenced me the most.

The judge I admire most and hope to emulate is retired Fourth Circuit Judge Charles W. Arnold, Jr. He took the bench after a distinguished career where he had trials in both state and federal court. He served in city government and in private practice. He was always prepared for court and expected lawyers who appeared before him to also be prepared. Judge Arnold valued everyone's time and ran an efficient docket. His rulings always followed the law. Judge Arnold was kind to his staff, he treated them like family. Judge Arnold embodied both toughness and compassion. I hope to be just like him. He also let me marry his daughter and he's a wonderful grandfather.

The lawyer who trained me for the role of judge, was never a judge himself. He was a central Georgia sole practitioner. He served his clients fairly and honestly. He did not get rich practicing law but provided for his family. He encouraged me to always tell the truth and live with integrity. He showed me how to put others first and look for the narrow road. Tommy Talbot, my father, taught me to walk humbly, no matter what position I hold.

Finally, the lawyer who shaped me more than any other is my wife, Cathy. She is my rock and wise counsel. She was an Assistant State Attorney in the Fourth Circuit when we met, and I left tax law to follow in her footsteps. When our children were born, she and I experienced those invaluable life lessons together that come through parenting. She is an amazing mother, wife and prosecutor. Cathy brings out the best in me.

In closing, let me say how excited I am for the opportunity to continue public service in the Seventh Circuit. I have been blessed to have a home and raise my family in St. Johns County. God willing, I hope to spend the many years I have left in service to the Seventh Circuit and this great state that means so much to me. Thank you in advance for your time and consideration.

REFERENCES

73. List the names, addresses, e-mail addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for a judicial position and of whom inquiry may be made by the Commission and the Governor.

Judge Joe Boatwright
Fifth District Court of Appeal
300 S. Beach Street
Daytona Beach, FL 32114

Michael Coolican
Assistant United States Attorney
Deputy Chief, Jacksonville Division
300 N. Hogan Street, Suite 700
Jacksonville, FL 32202

Daniel Hilbert
Shareholder, Canan Law
1030 N. Ponce de Leon Blvd
St. Augustine, FL 32084

Marcia Morales Howard
Chief United States District Judge
300 N. Hogan Street, Suite 11-350
Jacksonville, FL 32202

Richard Komando
St. Johns County Attorney
1845 East West Parkway, Suite 6
Fleming Island, FL 32003

Sheriff Robert A. Hardwick
St. Johns County Sheriff's Office
4015 Lewis Speedway
St. Augustine, FL 32084

Maria Chapa Lopez
Former United States Attorney
Middle District of Florida 2018-2021

Judge Howard Maltz
7th Circuit Court
4010 Lewis Speedway, Rm. 365
St. Augustine, FL 32084

Monte C. Richardson
United States Magistrate Judge
300 N. Hogan Street, Suite 5-411
Jacksonville, FL 32202

Robert E. Schrader, III
Shareholder, Boyd & Jenerette
201 N. Hogan Street, Suite 400
Jacksonville, FL 32202

CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(l), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 2ND day of OCTOBER, 2025.

Frank Merrill Talbot, II _____

Printed Name



Signature

State of Florida

County of DUNAL _____

Sworn to (or affirmed) and subscribed before me by means of

physical presence OR online notarization

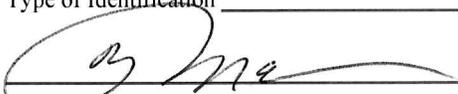
this 2ND day of OCTOBER, 2025.

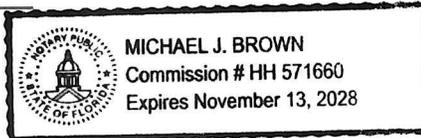
By _____

Personally known _____

Produced ID _____

Type of Identification _____


Signature Notary Public



Printed name of Notary Public

(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.

FINANCIAL HISTORY

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current Year-To-Date: 195,100

Last Three Years: 191,800 183,400 176,200

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current Year-To-Date: Same as 1

Last Three Years:

3. State the gross amount of income or losses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

This is passive income, mostly from Design Containers S Corp. distributions. This also includes dividends and interest from other investments.

Current Year-To-Date: 133,563

Last Three Years: 164,022 155,261 196,434

4. State the amount you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current Year-To-Date: Same as 3

Last Three Years:

5. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

Current Year-To-Date: Same as 3

Last Three Years:

FORM 6
FULL AND PUBLIC
DISCLOSURE OF
FINANCIAL INTEREST

PART A – NET WORTH

Please enter the value of your net worth as of December 31 or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of 9/26, 2025 was \$ 5,989,831.

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds \$1,000. This category includes any of the following, if not held for investment purposes; jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is \$ 250,000

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

| DESCRIPTION OF ASSET (specific description is required – see instructions p. 3) | VALUE OF ASSET |
|---|----------------|
| Primary Residence | 1,073,436 |
| Merrill Lynch Joint Account | 983,564 |
| Merrill Lynch Edge Account | 424,646 |
| Thrift Savings Plan (401k) | 1,802,616 |
| Roth IRA | 146,000 |
| BOA checking accounts, joint | 20,611 |

PART C - LIABILITIES

LIABILITIES IN EXCESS OF \$1,000 (See instructions on page 4):

| NAME AND ADDRESS OF CREDITOR | AMOUNT OF LIABILITY |
|---|---------------------|
| VW Financial Services PO Box 94005 Palatine, IL 60094 | 12,213 |
| | |
| | |
| | |
| | |
| | |

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

| NAME AND ADDRESS OF CREDITOR | AMOUNT OF LIABILITY |
|------------------------------|---------------------|
| | |
| | |
| | |

**PART B - ASSETS
CONT.**

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds \$1,000. This category includes any of the following, if not held for investment purposes; jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is \$ _____

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)

VALUE OF ASSET

| | |
|--|---------|
| Life Insurance Northwestern | 659,908 |
| Life Insurance Mass Mutual | 152,254 |
| Life Insurance Northwestern | 140,398 |
| College 529 plan (CCH) | 61,122 |
| College 529 plan (EMT) | 54,989 |
| Design Containers S Corp non-voting stock (estimate) | 500,000 |

PART D - INCOME

You may ***EITHER*** (1) file a complete copy of your latest federal income tax return, *including all W2's, schedules, and attachments*, ***OR*** (2) file a sworn statement identifying each separate source and amount of income which exceeds \$1,000 including secondary sources of income, by completing the remainder of Part D, below.

I elect to file a copy of my latest federal income tax return and all W2's, schedules, and attachments.
 (if you check this box and attach a copy of your latest tax return, you need not complete the remainder of Part D.)

PRIMARY SOURCE OF INCOME (See instructions on page 5):

| NAME OF SOURCE OF INCOME EXCEEDING \$1,000 | ADDRESS OF SOURCE OF INCOME | AMOUNT |
|--|-----------------------------|--------|
| | | |
| | | |
| | | |

SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person—see instructions on page 6]

| NAME OF BUSINESS ENTITY | NAME OF MAJOR SOURCES OF BUSINESS' INCOME | ADDRESS OF SOURCE | PRINCIPAL BUSINESS ACTIVITY OF SOURCE |
|-------------------------|---|-------------------|---------------------------------------|
| | | | |
| | | | |
| | | | |

PART E – INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]

| | BUSINESS ENTITY #1 | BUSINESS ENTITY #2 | BUSINESS ENTITY #3 |
|---|--------------------|--------------------|--------------------|
| NAME OF BUSINESS ENTITY | | | |
| ADDRESS OF BUSINESS ENTITY | | | |
| PRINCIPAL BUSINESS ACTIVITY | | | |
| POSITION HELD WITH ENTITY | | | |
| I OWN MORE THAN A 5% INTEREST IN THE BUSINESS | | | |
| NATURE OF MY OWNERSHIP INTEREST | | | |

IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE

OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

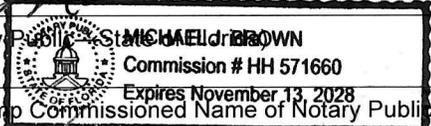
[Handwritten Signature]

SIGNATURE

STATE OF FLORIDA

COUNTY OF DUVAL

Sworn to (or affirmed) and subscribed before me this 2ND day of October, 2025 by _____

(Signature of Notary Public) *[Signature]*

 (Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: October 1, 2025

JNC Submitting To: 7th Circuit

Name (please print): Frank Talbot

Current Occupation: AUSA

Telephone Number:

Attorney No.: 024661

Gender (check one): Male Female

Ethnic Origin (check one): White, non-Hispanic

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: St. Johns

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

CONSUMER'S AUTHORIZATION FOR
FDLE TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Frank Talbot

Printed Name of Applicant


Signature of Applicant

Date: October 1, 2025



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 3:23-cr-138-WWB-LLL

TIMOTHY CROWE

**UNITED STATES' RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

The United States of America responds in opposition to defendant's Motion to Dismiss (Doc. 27). Defendant's motion advances three arguments. First, that defendant is not "adjudicated mentally defective" under 18 U.S.C. § 922(g)(4) and 27 C.F.R. § 478.11; second, that 18 U.S.C. § 922(g)(4) is void for vagueness; and third, that the statute prohibiting someone who is mentally defective from possessing a firearm violates the Second Amendment, in light of the Supreme Court's ruling in *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). For the reasons stated below, the motion should be denied.

BACKGROUND

Defendant attempted to purchase a Taurus 9mm pistol from Best Deal Gun and Pawn, a federally licensed firearms dealer, on April 26, 2022. Staff at Best Deal provided defendant with an ATF Form 4473 to complete. The ATF Form 4473 is a government form and required for use by firearms dealers to accurately record the actual buyer of the firearm as well as gather other information to ensure that the

firearm is not transferred to a prohibited person. Question 21.f. on Form 4473¹ asks the following question:

“Have you ever been adjudicated as a mental defective OR have you ever been committed to a mental institution?”

Defendant answered “No” to the question. The clerk submitted defendant’s information to FDLE as part of the required background check. The firearm sale was denied, and defendant did not receive the firearm.

Defendant signed the Form 4473, certifying that his answers were true and correct and that he had read and understood the Notices, Instructions and Definitions. The Form 4473 included the following definition for question 21.f:

Adjudicated as a Mental Defective: A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) is a danger to himself or to others; or (2) lacks the mental capacity to contract or manage his own affairs. This term shall include: (1) a finding of insanity by a court in a criminal case; and (2) those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.

Prior to attempting the firearm purchase, defendant was found not guilty by reason of insanity (NGRI) in two separate state criminal court cases. The first NGRI was in case number 2014-CF-1788, in the Circuit Court, Fourth Judicial Circuit, in Clay County, Florida. Defendant was arrested on January 6, 2014, and charged with burglary. According to the arrest report from the Clay County Sheriff’s Office (CCSO), defendant broke into the victim’s home after defendant had wrecked his car

¹ A redacted copy of the actual 4473 is attached as Exhibit A.

nearby. CCSO located defendant, apparently injured from the car crash, inside the victim's home. Officers observed that it appeared defendant had broken into the home by breaking a window out with a brick. Defendant told officers that he had been stabbed by one of the homeowners. CCSO determined that the homeowners, husband and wife, were not at home and there had been no stabbing. One of the homeowners was a relative of the defendant but told CCSO that they had not talked to defendant in about two or three years.

Defendant was charged with burglary of a dwelling. As his case progressed through the court system, defendant was evaluated by Dr. Jerry Valente, a licensed psychologist. Dr. Valente found that defendant was competent to proceed to trial, but was of the opinion that defendant was legally insane at the time of the alleged burglary. In his forensic evaluation, Dr. Valentine noted that defendant had been diagnosed and treated for ADHD, Major Depression, Bipolar Disorder and Generalized Anxiety Disorder since about 2009. Defendant reported to Dr. Valentine that his current medications included Lithium, Seroquel and Xanax. On February 8, 2016, the state circuit judge entered an order finding defendant NGRI. Defendant was ordered to receive outpatient mental health counseling. Defendant was also ordered to receive treatment at the Clay Behavioral Health Center. Defendant remained on conditional release until terminated by court order entered on December 21, 2017.

The second NGRI was in case number 2017-CF-1483, in the Circuit Court, Fourth Judicial Circuit, in Clay County, Florida. Defendant was arrested on

November 21, 2017, and charged with armed robbery, aggravated assault, aggravated battery, and burglary. According to the CCSO report, defendant was visiting his ex-wife's son and helping her son work on a motorcycle. According to the son, defendant became agitated and demanded the motorcycle. Defendant threw a screwdriver at the son and threatened to strike him with a motorcycle helmet. The son gave defendant the motorcycle and called 911. The son also called his mother, the ex-wife. Shortly after this confrontation, the ex-wife arrived to her son's home. Defendant got into an argument with his ex-wife in the driveway of her son's home. The ex-wife was attempting to stop defendant from taking her son's motorcycle. Defendant threw the motorcycle keys, slammed the motorcycle helmet on the ground and then broke out a window on defendant's car. The ex-wife ran into her son's home and defendant left the area before police arrived. While police were on scene at the son's house, the ex-wife received a report from her neighbor that defendant was at her home, about two miles away. CCSO responded to the ex-wife's home. CCSO deputies observed what appeared to be human feces in the driveway. As they approached the house, they saw that windows and doors had been broken and defendant appeared to have cut himself while opening the door. Inside the house CCSO deputies saw where defendant had started to write his name in blood on a wall. Several windows had been smashed and the kitchen had been severely damaged. CCSO deputies located defendant, naked, in a tool shed behind his ex-wife's home. Defendant was transported to a hospital. After his release from the hospital, he was taken to jail.

Defendant filed a notice of intent to rely on defense of insanity on March 13, 2018. Defendant was evaluated by Dr. Alan Harris, a licensed psychologist. Dr. Harris opined that defendant was legally insane at the time of the alleged offenses. On June 11, 2018, the state circuit judge entered an order finding defendant NGRI. Defendant was ordered to receive outpatient mental health counseling. Defendant was again ordered to receive treatment at the Clay Behavioral Health Center. Defendant remained on conditional release until terminated by court order entered on June 11, 2021.

MENTALLY DEFECTIVE

18 U.S.C. § 922(g)(4) provides that it is unlawful for anyone “who has been adjudicated as a mental defective or who has been committed to a mental institution” to possess a firearm. The statute does not define what “adjudicated as a mental defective” means. The Code of Federal Regulations provides the following definition:

Adjudicated as a mental defective.

(a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

- (1) Is a danger to himself or to others; or
- (2) Lacks the mental capacity to contract or manage his own affairs.

(b) The term shall include—

- (1) A finding of insanity by a court in a criminal case; and

(2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice

27 C.F.R. § 478.11

The Eleventh Circuit addressed the constitutionality of 18 U.S.C. § 922(g)(4) in *U.S. v. McIlwain*, 772 F.3d 688 (11th Cir. 2014). McIlwain decided whether an Alabama state court commitment met the definition of “committed to a mental institution.” In finding that an Alabama state court commitment did meet the definition, the Eleventh Circuit relied on 27 C.F.R. § 478.11. “We are also aided in our task here by the regulations of the ATF appearing in 27 C.F.R. § 478.11, entitled “Meaning of terms,” which define numerous terms in § 922(g) for federal law enforcement.” *Id* at 694.

Other circuits have also upheld the constitutionality of 18 U.S.C. § 922(g)(4) while referencing 27 C.F.R. § 478.11. Several courts have relied specifically on 27 C.F.R. § 478.11 in finding that a defendant had been committed to a mental institution within the definition of 922(g)(4). *See United States v. Bartley*, 9 F.4th 1128, 1133 (9th Cir. 2021); *United States v. Dorsch*, 363 F.3d 784, 785 (8th Cir. 2004); and *United States v. McLinn*, 896 F.3d 1152, 1155 (10th Cir. 2018).

The defense cites *United States v. Hansel*, 474 F.2d 1120, 1122 (8th Cir. 1973). Hansel involved a civil commitment by a local board of health, not a court. The court found that the local board of health did not “adjudicate” and the subsequent hospitalization was not a “commitment.” While *Hansel* was decided prior to 27

C.F.R. § 478.11, there is nothing in the opinion to suggest that a court finding of not guilty by reason of insanity would not have met the definition of an “adjudication” by the Eighth Circuit. The defense also cites *United States v. Tucker*, 47 F.4th 258 (5th Cir. 2022). In *Tucker*, the United States argued that a physician’s emergency certificate constituted an adjudication. The court in *Tucker* cited 27 C.F.R. § 478.11, explaining that the physician’s determination and a court adjudication are two different things.

The defense argues that this court should give no deference to 27 C.F.R. § 478.11. If the definition of “adjudicated mentally defective” does not include a court finding of not guilty by reason of insanity, then defendant’s statement on the Form 4473 would not be false. However, if this court recognizes 27 C.F.R. § 478.11 as providing a useful and lawful definition of what “adjudicated mental defective” means under 18 U.S.C. § 922(g)(4), then the two prior findings of not guilty by reason of insanity in felony cases would qualify. The Form 4473, under the Notices, Instructions, and Definitions section, specifically includes “a finding of insanity by a court in a criminal case” in the definition of adjudicated as a mental defective.

VOID FOR VAGUENESS

Defendant argues that 18 U.S.C. § 924(a)(1)(A) is void for vagueness. Every court to consider the issue has ruled that 924(a)(1)(A), or its cousin 18 U.S.C. § 922(a)(6), were not void for vagueness. *See Yoo v. United States*, No. 6:18-CR-16, 2023 WL 4234395, at *3 (E.D. Tex. June 28, 2023) (Further, the Report observed that the Fifth Circuit and other courts have rejected the claim that 18 U.S.C. §

924(a)(1)(A) is unconstitutionally vague); *United States v. Shipley*, 546 F. App'x 450, 456 (5th Cir. 2013) (void-for-vagueness claim is therefore without merit); *United States v. McCord*, 904 F. Supp. 1029, 1038 (D. Neb. 1995) (both the statute, and the ATF Form 4473 itself, are such that an ordinary person would understand that falsely answering the indictment question on the Form would subject the buyer to federal criminal liability. This ground provides no basis for dismissal); *United States v. Willis*, 505 F.2d 748, 749 (9th Cir. 1974) (We are not persuaded by appellant's claim that that portion of the statute referring to a crime punishable by more than one year and the 'Note' to question 8b did not give fair and adequate notice to him under his particular circumstances); *United States v. Berry*, 60 F.3d 288, 293 (7th Cir. 1995) (Thus, any vagueness claim fails. This statute is light years away from the classic application of void for vagueness made by Justice Butler in *Lanzetta v. New Jersey*).

Defendant completed the ATF Form 4473 and claimed he had not been adjudicated mentally defective. The Form 4473 included a definition for that term which specifically listed an insanity finding by a court in a criminal case. As applied to the defendant, there is no vagueness.

SECOND AMENDMENT

Defendant claims that *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 213 L.Ed.2d 387 (2022), now limits the government's ability to prohibit individuals from possessing firearms who have been adjudicated mentally defective. The *Bruen* challenge is misplaced. The indictment does not charge a violation of 18

U.S.C. § 922(g)(4), rather the false statement related to a § 922(g)(4) prohibition. The Eleventh Circuit Pattern Jury Instructions provide the following three elements for a 924(a)(1)(A) offense:

- (1) the Defendant made a false statement or representation in the [record's name];
- (2) to a federally licensed firearms dealer; and
- (3) the Defendant knew that the statement or representation was false.

Pattern Crim. Jury Instr. 11th Cir. OI O35.1 (2020).

Even if the court were to decide that 922(g)(4) was unconstitutional under *Bruen*, defendant never possessed a firearm, rather he lied on a government form. The Second Amendment does not permit nor protect lying to acquire a firearm. “Our legal system provides methods for challenging the Government's right to ask questions—lying is not one of them. A citizen may decline to answer the question, or answer it honestly, but he cannot with impunity knowingly and willfully answer with a falsehood.” *Bryson v. United States*, 396 U.S. 64, 72, 90 S.Ct. 355, 24 L.Ed.2d 264 (1969), reaffirmed in *Lachance v. Erickson*, 522 U.S. 262, 118 S.Ct. 753, 139 L.Ed.2d 695 (1998). *United States v. Holden*, 70 F.4th 1015, 1016 (7th Cir.), cert. denied, 144 S. Ct. 400, 217 L. Ed. 2d 216 (2023).

Even if defendant were facing a § 922(g)(4) charge, the Second Amendment would not authorize his firearm possession, post *Bruen*. 18 U.S.C. § 922(g)(4) proscribes the possession of firearms by those adjudicated mentally defective or committed to a mental institution. The prohibition of firearms by this group of people is not constitutionally protected as it involved conduct outside the scope of

the Second Amendment. Assuming Defendant could show his conduct is protected under the Second Amendment, § 922(g)(4) would still be constitutional because the statute is consistent with the nation's longstanding historical tradition of disarming persons considered a risk to society, including the mentally ill.

The mental defective and involuntarily committed individuals do not fall within “the people” protected by the Second Amendment, and their “right . . . to keep and bear Arms” is thus not “infringed” by laws prohibiting their possession of firearms. Rather, the Second Amendment’s protections extend only to “law-abiding, responsible citizens to use arms for self-defense.” *Id.* at 142 S. Ct. at 2131, *Heller*, 554 U.S. at 635. *Heller* emphasized that “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Heller* at 626. Although the Court did “not undertake an exhaustive historical analysis, it said that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.” *Id.* As *Heller* implicitly recognized, those individuals, like defendant, who have been declared a mental defective by the court are not responsible citizens with the same right to bear firearms as other citizens. The Court described such prohibitions on possession of firearms by the mentally ill as “presumptively lawful” and falling within “exceptions” to the right to bear arms. *Id.* at 626-627 n.26.

Regulations prohibiting the possession of firearms by the mentally ill are analogous to regulations prohibiting the possession of firearms by unlawful users of controlled substances. It should be uncontroversial that both classes consist of people

who may present diminished mental capacity or impaired judgement. *United States v. Yancy*, 621 F.3d 681, 685 (7th Cir.2010) (observing “habitual drug abusers, like the mentally ill, are more likely to have difficulty exercising self-control, making it dangerous for them to possess deadly firearms).

Evaluating Second Amendment challenges to gun regulations requires courts to make a “threshold inquiry” into whether the conduct regulated “fall[s] within the scope of the Second Amendments guarantee.” *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010). Here, that inquiry proves dispositive because, as both *Heller* and history make clear, people suffering from significant mental illness do not possess Second Amendment rights.

Colonial society at the time of the founding did not view persons with mental illness as being among those who could bear arms without “real danger of public injury.” *United States v. Skokien*, 614 F.3d 638, 640, (7th Cir.2010). “[M]ost scholars of the Second Amendment agree that the right to bear arms was tied to the concept of the virtuous citizenry and that, accordingly, the government could disarm ‘unvirtuous citizens.’” *Yancey* 621 F.3d at 684-685. THOMAS M. COOLEY, A TREATISE ON CONSTITUTIONAL LIMITATIONS 29 (Boston, Little Brown & Co. 1868) (explaining that constitutions protect rights for “the People” excluding, among others, “the idiot, the lunatic, and the felon”). From the time it originated in English law to the time of the Founding, the right to keep and bear arms was understood not to have extended to those citizens whose possession of them posed a danger to themselves or others. *Heller* 554 U.S. at 635.

Supreme Court precedents confirm this view. *Heller* upheld the “right of law-abiding, responsible citizens to use arms in defense of hearth and home.” 554 U.S. at 635. Parsing the Second Amendment’s text, the Court recognized that the plaintiff was entitled to keep a handgun in his home “[a]ssuming that [he] is not disqualified from the exercise of Second Amendment rights.” *Id.* at 635. *See also id.* at 631 (explaining the District had “apparently” used the word “disqualified” to “mean if [the plaintiff] is not a felon and is not insane”).

Bruen did not deviate from *Heller*’s principle that the right to bear arms belongs only to “law-abiding, responsible citizens.” 142 S. Ct. at 2131. And while *Bruen* invalidated New York’s “may-issue” licensing regime, it approved “shall-issue” regimes that “require applicants to undergo a background check or pass a firearms safety course.” *Id.* at 2138 n.9. The Court explained that shall-issue regimes which require license applicants to undergo fingerprinting, a background check, a mental health records check, and training in firearm handling and in laws regarding the use of force among other requirements are constitutionally permissible, subject to an as-applied challenge if they do not operate in that manner in practice.

The frequency with which *Bruen* employed the phrase “law abiding, responsible citizens”—rather than broadly referencing “the people” or “all Americans”—strongly indicates this was a deliberate choice of language that should be afforded due weight. *See US v. Jackson*, 69 F.4th 495, 503 (8th Cir. 2023) (in upholding § 922(g)(1), emphasizing “the Supreme Court’s repeated statements in *Bruen* that the Second Amendment protects the right of a ‘law-abiding citizen’ to

keep and bear arms”). In short, the Second Amendment’s text—and Supreme Court cases interpreting this text—demonstrates that it does not encompass possession of firearms by mental defectives and those who have been committed to a mental institution.

Even if this Court were to conclude that the Second Amendment covers those who have been declared mentally defective and those who have been committed to a mental institution, defendant still cannot prevail because § 922(g)(4) “is part of the historical tradition of disarming people considered to be a risk to society, such as the mentally ill. Indeed, substantially greater restrictions on liberty than mere disarmament were permitted to protect the public from the mentally ill.” In England, justices of the peace could lock up dangerous “lunatics” seize their property to pay the cost of securing them. *See The Origin of Insanity As A Special Verdict: The Trial for Treason of James Hadfield (1800)*, 19 *Law & Soc’y Rev.* 487 (1985) (citing Vagrancy Act of 1744, 17 *Geo. 2*, c. 5).

Similarly, “in eighteen-century America, justices of the peace were authorized to ‘lock up’ ‘lunatics’ who were ‘dangerous to be permitted to go abroad.’” Carton F.W. Larson, *Four Exceptions in Search of A Theory: District of Columbia v. Heller and Judicial Ipse Dixit*, 60 *Hastings L.J.* 1371, 1377 (2009). For example, an 18th century Connecticut law required authorities to confine to home or another suitable place “any distracted or lunatic Person...who is dangerous and unfit to be without restraint,” and if those responsible for the person “refuse[d] or neglect[ed]

to confine” the person, then the authorities were to “take all proper and effectual measures” to keep the person “from going at large,” including committing him “to the Gaol in that County where he or she dwells.” 1 Acts and Laws of the State of Connecticut, in American 236 (1796). In addition, the Third Circuit recently reasoned, in a decision vacated on other grounds, these sever restrictions on the liberty of the mentally ill made specific restrictions on firearm possession unnecessary at the time. *Beers v. Attorney General of the United States*, 927 F.3d 150, 157 (3d Cir.2019), vacated, 140 S.Ct. 2758 (2020).

A historical practice has existed generally disarming people deemed to be dangerous, such as those unwilling to swear an oath of allegiance to the colonies or the states. Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139, 157-60 (2007); Saul Cornell & Nathan DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 Fordham L. Rev. 487, 506-08 (2004). The mentally ill who have been adjudicated a mental defective or who have been committed to an institution are exactly the kind of potentially dangerous people that have historically been excluded from possessing firearms.

The Government has found one District Court who thus far has had the opportunity to consider the constitutionality of § 922(g)(4) post *Bruen*, The United States District Court for the Southern District of West Virginia, Charleston Division, in *United States of American v. James Gould*, 672 F. Supp. 3d 167 (May 5, 2023). As the District Court pointed out, § 922(g)(4) does not prohibit just anyone with a

mental illness from possessing a firearm, but instead prohibits only those individuals who have been adjudicated as a mental defective or who have been committed to a mental institution. The District Court referred to the definition of “adjudicated mental defective” and “committed to a mental institution” found in 27 C.F.R. § 478.11. A person adjudged to be a mental defective or who is committed to a mental institution is one who has been determined by a court, board commission or other lawful authority, to be a danger to himself and others, which is the criterion for a commitment in nearly every state. *Id* at 180.

The societal problem § 922(g)(4) addresses is to prohibit the possession of firearms by those people who have been determined to be a danger to themselves or others. The Supreme Court recognized that Congress enacted the Gun Control Act of 1968 because “it was concerned with the widespread traffic in firearms and their general availability to those whose possession thereof was contrary to the public interest. *Huddleston v. United States*, 415 U.S. 814, 824 (1974). “The principal purpose of the federal gun control legislation, therefore, was to curb crime by keeping ‘firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency.’” *Id*. Congress had two purposes for enacting § 922(g)(4), protecting the community from crime and preventing suicide, both of which could be accomplished by decreasing or eliminating firearm deaths by people who may not be criminals but who might commit sudden, unpremeditated crimes with firearms because of a mental illness. *See* 114 Cong. Rec. 21,829 (1968).

While there was no formal regulation prohibiting the possession of firearms by the mentally ill, there is a history of removing mentally ill individuals from the community through home confinement and involuntary committed to welfare and penal institutions. Carlton F.W. Larson, *Four Exceptions in Search of A Theory: District of Columbia v. Heller and Judicial Ipse Dixit*, 60 Hastings L.J. 1371, 1377 (2009); Gerald N. Grob, *The Mad Among Us: A History of the Care of America's Mentally Ill* 5-21, 29, 43 (1994). As such, formal laws to disarm the mentally ill were unnecessary.

“*Heller*, 128 S.Ct. at 2804, identified as a “highly influential” “precursor” to the Second Amendment the Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania to Their Constituents. (This report is reprinted in Bernard Schwartz, 2 *The Bill of Rights: A Documentary History* 662, 665 (1971).) The report asserted that citizens have a personal right to bear arms “unless for crimes committed, or real danger of public injury. *United States v. Skoien*, 614 F3d. 638 (7th Cir.2010).

While serving on the Seventh Circuit Court of Appeals, now-Justice Amy Coney Barrett authored a dissent offering a detailed analysis of firearm regulations related to felons that is similarly instructive. She recounted English laws prohibiting possession of firearms by Catholics, based on their presumed untrustworthiness or disloyalty to the Crown, as well as early American laws both before and after the Revolution disarming slaves and Native Americans. *Kanter v. Barr*, 919 F.3d 437, 457–58 (7th Cir. 2019), *abrogated by New York State Rifle & Pistol Ass'n, Inc. v.*

Bruen, 142 S. Ct. 2111, (2022) (Barrett, J., dissenting). “In sum, founding-era legislatures categorically disarmed groups whom they judged to be a threat to the public safety.” *Id.* at 458. Thus, although then-Judge Barrett disagreed with the panel majority conclusion that even nonviolent felons may categorically “lose their Second Amendment rights solely because of their status as felons,” she reasoned that history “does support the proposition that the state can take the right to bear arms away from a category of people that it deems dangerous.” *Id.* at 451, 464.

Thus, Section 922(g)(4) is consistent with that longstanding and analogous traditions of restricting firearm possession from those who are dangerous. Restrictions on the right to possess firearms from those adjudicated mentally defective or involuntarily committed to a mental institution are therefore constitutional under *Bruen*. Defendant’s claim that 922(g)(4) infringes on a Second Amendment right should be denied.

CONCLUSION

The definitions provided by 27 C.F.R. § 478.11 provide clear guidance as to what “adjudicated as a mental defective” means. This includes a finding of insanity in a criminal case. Defendant’s false statement on the ATF Form 4473 finds no relief

in *Bruen*, even if 922(g)(4) were unconstitutional. Therefore, the United States respectfully requests this Court deny defendant's Motion to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Lisa Call
Assistant Public Defender

s/ Frank Talbot

FRANK TALBOT
Assistant United States Attorney

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 3:00-cr-436-HLA-JBT

KARL WALDON

**UNITED STATES' RESPONSE IN OPPOSITION TO
KARL WALDON'S MOTION FOR COMPASSIONATE RELEASE**

The United States opposes Karl Waldon's motion, as construed, for compassionate release or home confinement¹ pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). Docs. 669 and 677. Waldon is one of the most dangerous criminals ever prosecuted by the Jacksonville Division of United States Attorney's Office. Waldon used his position of authority and trust as a law enforcement officer to murder² an innocent business owner, Sami Safar. The jury decided against the death penalty as to Counts One and Eight, finding in the Special Verdict Form (Doc. 555) that Waldon intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person...such that participation in the act constituted a reckless disregard for human life and the victim died as a result of the act.

¹ Home confinement is a BOP decision, not subject to court jurisdiction. *See United States v. Calderon*, 801 F. App'x 730, 731-32 (11th Cir. 2020).

² In Count 12, the jury specifically found that the killing of Sami Safar was murder...that is, the unlawful, willful, deliberate, malicious and premeditated killing of a human being with malice aforethought. Doc. 534

Waldon never sought a reduction in sentence or compassionate release from the warden of the facility where he is housed, thus he hasn't sought —much less exhausted—his administrative remedies. Regardless of exhaustion, Waldon's reasons for compassionate release do not satisfy the requirements of 18 U.S.C. 3553(a), the United States Sentencing Guidelines §1B1.13 and the Application Notes. Significantly, *United States v. Bryant*, No. 19-14267, 2021 WL 1827158 (11th Cir. May 7, 2021) limits the court's ability to consider other "extraordinary and compelling" reasons for relief. Waldon's stated reasons for relief do not fall into U.S.S.G. §1B1.13 Application Note categories for which the court could even consider Waldon for compassionate release.

Regardless of whether Waldon were to ever claim a statutorily recognized basis for compassionate release, whether the passage of time or old age open arguments not available to him at present, the heinousness of his crimes are too shocking for Waldon ever to be released.

BACKGROUND

A. Procedural History

Waldon was indicted in a second superseding indictment (Doc. 407) on August 21, 2002. The Indictment alleged the following:

Count One: Conspiracy to Violate Civil Rights, Resulting in Death

Count Two: Conspiracy to Distribute Cocaine and Cocaine Base

Count Three: Theft, Acting Under Color of Law

Counts Four, Five³ and Ten: Distribution of Cocaine or Cocaine Base

Count Six and Seven: Bodily Injury, Acting Under Color of Law

Count Eight: Kidnap, Theft, Death Resulting, Acting Under Color of Law

Count Nine: Hobbs Act Robbery

Count Eleven: Conspiracy to Obstruct Justice

Count Twelve: Murder of a Witness

Count Thirteen and Fourteen: Perjury before the Grand Jury

Count Fifteen: Tampering with a Witness

Waldon was convicted of all but one count and is currently serving life imprisonment.⁴ His conviction and sentence were affirmed in a published opinion, *United States v. Waldon*, 363 F.3d 1103 (11th Cir. 2004) (*per curiam*). He filed a petition for writ of certiorari with the United States Supreme Court, and his petition was denied.

Waldon's conviction became final on October 12, 2004, when his petition for writ of certiorari was denied by the United States Supreme Court. In 2010, almost six years later, Waldon filed his first post-conviction motion pursuant to Fed. R. Civ. P. Rule 60(b), raising several jurisdictional claims. Doc. 646. The Court, noting that Rule 60(b) had no application to a collateral attack in a criminal case, liberally construed the motion as one under 28 U.S.C. § 2255. Doc. 652.

³ Waldon was acquitted of Count Five, convicted of all others.

⁴ Waldon was sentenced to life on Counts One, Seven, Eight and Twelve.

Citing *Castro v. United States*, 540 U.S. 375, 124 S. Ct. 786 (2003), the Court issued an order instructing Waldon to amend his motion and re-file under Section 2255 within sixty days, advising him that his motion was “subject to being dismissed as untimely” and instructed him to address the timeliness issue in his motion. Doc. 652. Waldon filed nothing further within the sixty-day period, which expired on March 28, 2011. On December 19, 2011, Waldon moved to withdraw his Rule 60(b) motion, and his motion was withdrawn. Docs. 655 and 656. On August 6, 2012, Waldon filed a motion under Fed. R. Civ. P. 60(d)(3) and on October 23, 2013 the Court denied the motion stating that “the Federal Rules of Civil Procedure do not provide for relief from a criminal judgment” and cited *United States v. Mosavi*, 138 F.3d 1365, 1366 (11th Cir. 1998).

On July 19, 2016, the United States Court of Appeals issued an order denying Waldon’s Application for Leave to File a Second or Successive Motion under 28 U.S.C. § 2255 stating that according to District Court records, Waldon had not filed his first Section 2255 motion.

On December 18, 2019, Waldon filed the instant “Motion 28 U.S.C.A. Section 1361” (Doc. 669) with supplement (Doc. 677) which the Court construed as a motion for compassionate release and/or home confinement and ordered the United States to respond.

B. Facts of the Underlying Convictions

The facts are appalling. The Second Superseding Indictment (Doc. 407),

alleges how Waldon used his status as a law enforcement officer to engage in multiple crimes over an extended period of time. Waldon stole money and drugs from drug dealers (Doc. 407, Ct. 1, ¶ 27, ¶ 31, ¶ 34, ¶ 44), kidnapped and pepper sprayed a female victim (Doc. 407, Ct. 6, Doc. 671, PSR ¶ 24), falsified search warrants to steal drugs and money (Doc. 407, Ct. 1, ¶ 29), organized and attempted home burglaries (Doc. 407, Ct. 1, ¶¶ 36-40 ¶¶ 55-66), and committed a home invasion robbery (Doc. 407, Ct. 1, ¶¶ 67-72).

The July 3, 1998, kidnapping and murder of Mr. Safar did not begin nor end Waldon's criminal activity. Even after the murder, Waldon continued to steal and sell drugs. (Doc. 407, Ct.2, ¶ 34, ¶¶ 37-38, Ct. 4, Ct. 10), obstruct justice and intimidate witnesses (Doc. 407, Cts. 11 and 15) and perjured himself before the Grand Jury (Doc. 407, Cts. 13 and 14).

The factual summary from the Eleventh Circuit opinion describes the criminal activity of Waldon, including the murder of Mr. Safar, as follows:

“Karl T. Waldon was a sworn deputy sheriff of the Jacksonville Sheriff's Office (“JSO”), serving as a member of the SWAT team from 1994 to 1997. In April 1997, Waldon began serving as a narcotics detective for JSO. In November of that same year, Officers Aric Sinclair and Jason Pough were also assigned to the narcotics unit. Sinclair and Pough brought with them to their new unit a penchant for stealing money from drug dealers, including a local dealer named Daryl Crowden. These illicit activities flourished when they were placed in Waldon's division, and Waldon soon joined in. The three absconded drugs and money from criminals for their own use, often reselling the drugs through other dealers for profit, and eventually began burglarizing houses and hotel rooms of known drug dealers. Crowden soon became the trio's partner in crime, informing the officers of potential hits and purchasing the drugs they stole.

The Safar Murder:

In 1998, Sinclair took a job doing off-duty security work for South Trust Bank. After noticing that two bank customers, convenience store owner Sami Safar and his nephew Hassam Tahhan, routinely withdrew large amounts of cash for their business, Sinclair concocted a plan with Crowden to rob the men. On May 15, Crowden and Jeffrey Reed arrived at the bank while Tahhan was inside. When Tahhan returned to his car with a money bag containing approximately \$50,000, Reed pointed a gun at him, grabbed the bag and fled with Crowden. Crowden then gave Sinclair \$20,000 of the stolen money.

Upon learning of the Tahhan robbery, Waldon told fellow officer Reginald Bones that he “would like to get a hit like that.” Waldon approached Sinclair, who provided him with a description of Safar's vehicle but refused to assist him in another robbery because “the heat [was] on” from the first robbery. Pough also refused to help, so Waldon recruited Officer Bones and recovering drug addict and convicted felon Kenneth McLaughlin to assist in pulling off the heist. According to the plan, Bones would drive over to the bank and notify Waldon when he saw Safar's truck. Waldon would then pull over Safar as if conducting a routine traffic stop, and Bones and McLaughlin would rush in, pepper spray the driver, steal his money and flee. Bones, however, backed out on the day of the robbery and Waldon was forced to reschedule the heist for the following week. In the meantime, Waldon's brother-in-law, James Swift, asked Waldon for a loan. Waldon told him that he could make the loan if Swift could help him to collect some money supposedly owed to him by a drug dealer.

On July 3, 1998, Waldon, in his squad car, and McLaughlin and Swift in a Maxima, arrived at a location near the bank. Swift was instructed to alert Waldon when Safar left the bank. Waldon's new plan was to pull over Safar, create a reason to arrest him, and take him away—at which point Swift and McLaughlin would take the money from Safar's car. The plan was proceeding accordingly. However, when Waldon arrested Safar, he refused to part with his money. Waldon called McLaughlin and Swift on a cell phone and told them to follow his squad car. The three continued to talk as they drove, and Waldon became very anxious because “the person had seen his face.” The men finally stopped in a parking lot to decide what to do, and Waldon decided that Safar had to be “taken out.” McLaughlin objected and the three began yelling at each other, at which point Waldon decided to relocate to another parking lot.

At the second parking lot, Waldon stepped out of his car with a black rope in his hand and yelled at Swift and McLaughlin to get out of their car. At first they refused, but then reluctantly approached Waldon's car. Waldon opened the back door and Safar, still handcuffed behind his back, began begging for his life. With McLaughlin blocking Safar's exit, Waldon followed Safar into the back seat, put the rope around his neck and choked him. Safar fell between the seat and the cage of the squad car and Waldon ordered McLaughlin to get into the back seat and finish “choking him

out.” Safar uttered his last breath as McLaughlin climbed into the back seat and reached for the rope. After McLaughlin informed Waldon that Safar was dead, Waldon frantically drove around the city with McLaughlin in his patrol car and Swift following in the Maxima. Eventually, Safar's body was transferred to the Maxima and subsequently dumped by McLaughlin in a secluded area. The three later met at Swift's apartment to divvy out the money and clean up their tracks.” *United States v. Waldon*, 363 F.3d 1103, 1106–07 (11th Cir. 2004).

C. Waldon’s Reasons for Compassionate Release

Waldon’s request for compassionate release, as construed, appears to raise the following reasons for his compassionate release:

1. The sentencing disparity between Waldon and his co-defendants who testified against him. Waldon was punished more severely because he went to trial, exercising his constitutional right.
2. The pre-*Booker* sentencing Waldon faced.
3. Rehabilitative conduct while incarcerated, highlighting multiple programs completed. Waldon claims to be a low risk of recidivism and he points to a release plan where he could be subject to home detention and electronic monitoring.⁵
4. Care for his aging mother who either has cancer or is a cancer survivor.

Waldon is currently incarcerated at FCI Williamsburg in Salters, South Carolina, and is 58 years old. *See* BOP Inmate Locator at <https://www.bop.gov/inmateloc/> (last accessed on May 24, 2021). Waldon has served a little over 20 years of his life sentence.

⁵ Waldon discusses in great detail his rehabilitative programming, books he has read and makes a passionate plea for his release. All of this falls under the umbrella of rehabilitation.

MEMORANDUM OF LAW

No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved. *Williams v. United States*, 401 U.S. 667, 691, 91 S. Ct. 1171, 1179, 28 L. Ed. 2d 404 (1971). Without finality, the criminal law is deprived of much of its deterrent effect. *Teague v. Lane*, 489 U.S. 288, 309, 109 S. Ct. 1060, 1074, 103 L. Ed. 2d 334 (1989). This Court has no inherent authority to modify a sentence. *United States v. Diaz-Clark*, 292 F.3d 1310, 1319 (11th Cir. 2002). A court may reduce a term of imprisonment upon finding “extraordinary and compelling circumstances,” consistent with applicable policy statements of the Sentencing Commission. 18 U.S.C. § 3582(c)(1)(A). Under the statute, as amended by Section 603(b) of the First Step Act, this Court may act “upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.”

The Sentencing Commission’s policy statement, found at USSG §1B1.13 Application Note 1, addressing sentence reductions under § 3582(c)(1)(A), defines “extraordinary and compelling reasons” to include: (A) the medical condition of the

defendant, such as (i) terminal illness, (ii) a serious physical or medical condition that substantially diminishes the ability of the defendant to provide self-care in prison; (B) older defendants with serious deterioration of health who have served a significant portion of their sentence; (C) the death of the caregiver of the defendant's minor children or incapacity of a spouse with no available caregiver; or (D) other extraordinary and compelling reasons as determined by the Director of the Bureau of Prisons. *See* USSG §1B1.13 Application Notes 1.⁶ The Eleventh Circuit recently held that Application Note 1(D) does not open compassionate release to any category a defendant might choose to argue. “Because we can apply both the amended Section 3582(c)(1)(A) and Application Note 1(D), we must apply both. In short, 1B1.13 is an applicable policy statement for all Section 3582(c)(1)(A) motions, and Application Note 1(D) does not grant discretion to courts to develop “other reasons” that might justify a reduction in a defendant's sentence.” *United States v. Bryant*, No. 19-14267, 2021 WL 1827158, at *2 (11th Cir. May 7, 2021). “Application Note 1(D) is not at odds with the amended Section 3582(c)(1)(A). We cannot replace the phrase “[a]s determined by the Director of the [BOP]” with “as determined by a district court.”” *Id* at *14. The Circuits are now split as to the application of Note 1(D), most

⁶ The policy statement refers only to motions filed by the BOP Director. That is because the policy statement was last amended on November 1, 2018, and until the enactment of the First Step Act on December 21, 2018, defendants were not entitled to file motions under § 3582(c). *See* First Step Act of 2018, Pub. L. No. 115-391, § 603(b), 132 Stat. 5194, 5239; *cf.* 18 U.S.C. § 3582(c) (2012). In light of the statutory command that any sentence reduction be “consistent with applicable policy statements issued by the Sentencing Commission,” § 3582(c)(1)(A)(ii), and the lack of any plausible reason to treat motions filed by defendants differently from motions filed by BOP, the policy statement applies to motions filed by defendants as well.

allowing the court to consider other reasons beyond the Note 1(A-C) factors. Even when an extraordinary and compelling reason exists, however, a court should only grant a motion for release if it determines that the defendant is not a danger to the public. USSG §1B1.13(2).

Previously, only the BOP could file a motion for compassionate release. The First Step Act amended the provision to permit a defendant to bring a motion upon the *earlier* of either (1) the exhaustion of all administrative rights to appeal the BOP's failure to bring a motion to reduce his sentence (the exhaustion requirement) *or* (2) the lapse of 30 days from the BOP's receipt of the defendant's request that the BOP bring such a motion (the lapse requirement). *See* First Step Act of 2018, 115 P.L. 391, § 603(b)(1); *see also United States v. Gardner*, 2020 WL 1673315, at *1 (D. Minn. Apr. 6, 2020).⁷

⁷ Some courts—including some within the Middle District of Florida—have held that, if the warden denies a request during the first 30 days, the inmate cannot proceed to court until administrative remedies are fully exhausted. *See United States v. Read*, 2020 WL 3103983, *2 (M.D. Fla. June 11, 2020) (J. Chappell); *United States v. Raftopoulos*, 2020 WL 3064793, *3 (M.D. Fla. June 9, 2020) (J. Antoon); *United States v. Rodriguez-Begerano*, 2020 WL 3000737, *2 (M.D. Fla. June 4, 2020) (J. Covington); *United States v. Chappell*, 2020 WL 2573404, *1–2 (M.D. Fla. May 21, 2020) (J. Covington); *United States v. Eyerman*, 2020 WL 2466189, *2–3 (M.D. Fla. May 13, 2020) (J. Steele); *United States v. Weidenhamer*, 2020 WL 1929200 (D. Ariz. Apr. 21, 2020); *United States v. Miller*, 2020 WL 113349 (D. Idaho Jan. 8, 2020); *United States v. Elgin*, 2019 U.S. Dist. LEXIS 86571, *3 (N.D. Ind. May 23, 2019); *United States v. Watson*, 2020 WL 1890541, at *3 (N.D. Okla. Apr. 16, 2020); *United States v. Hilton*, 2020 WL 836729 (M.D.N.C. Feb. 20, 2020); *United States v. Nance*, 2020 WL 114195 (W.D. Va. Jan. 10, 2020); *United States v. Mendoza*, 2019 WL 6324870, at *4 (D. Minn. Nov. 26, 2019); *United States v. Becks*, 2019 U.S. Dist. LEXIS 111051, *2–3 (D. Neb. July 3, 2019) (held as matter of discretion). However, the Department's views the plain language of the First Step Act to allow an inmate to file a motion after 30 days have passed since the request was made to the warden, *or* after exhausting administrative review, *whichever is earlier*. *See* First Step Act of 2018, 115 P.L. 391, § 603(b)(1); *United States v. Gray*, 416 F. Supp. 3d 784, 787–88 (S.D. Ind. Sept. 20, 2019); *United States v. Gardner*, 2020 WL 1673315, at *1 (D. Minn. Apr. 6, 2020).

Once either the exhaustion or lapse requirement is met, a court may reduce a defendant's term of imprisonment after considering whether the 18 U.S.C. § 3553(a) factors weigh in favor of release. *See* 18 U.S.C. § 3582(c)(1)(A); USSG §1B1.13. Reductions may be granted if (i) "extraordinary and compelling reasons warrant such a reduction" and (ii) "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." Section 3582(c)(1)(A)(i).

As the movant, Waldon bears the burden to establish that he is eligible for a sentence reduction. *United States v. Heromin*, 8:11-cr-550-T-33SPF, 2019 WL 2411311, at *2 (M.D. Fla. June 7, 2019) (J. Covington); *cf. United States v. Hamilton*, 715 F.3d 328, 337 (11th Cir. 2013) (holding that a movant for a reduction under § 3582(c)(2) bears the burden to establish a reduction is warranted).

APPLICATION AND ARGUMENT

A. Waldon has not exhausted his administrative remedies.

According to BOP, Waldon never filed a request for compassionate release. Waldon has not started to pursue his administrative remedies. Waldon may view this as a futile process, but it is the procedure he must follow.

The failure to have exhausted administrative remedies within the BOP is fatal to a defendant's motion for compassionate release. *United States v. Raia*, 954 F.3d 594, 597 (3rd Cir. 2020) (published) (per curiam) ("Given BOP's shared desire for a safe and healthy prison environment, we conclude that strict compliance with § 3582(c)(1)(A)'s exhaustion requirement takes on added—and critical—

importance.”); *see also United States v. Estrada Elias*, No. 6:06-096-DCR, 2019 WL 2193856, at *2 (E.D. Ky. May 21, 2019); *accord United States v. Elgin*, Case No. 2:14-cr-129-JVB-JEM, 2019 U.S. Dist. LEXIS 86571, *2–3 (N.D. Ind. May 23, 2019); *cf. United States v. Leverette*, 721 F. App’x 916, 917 (11th Cir. 2018) (exhaustion of BOP remedies is requisite for judicial review under 28 U.S.C. § 2241); *United States v. Roberson*, 746 F. App’x 883, 885 (11th Cir. 2018) (same); *United States v. Alexander*, 609 F.3d 1250, 1260 (11th Cir. 2010) (same). The vast majority of district courts to address this issue agree. *See, e.g., United States v. Epstein*, 2020 WL 1808616 (D.N.J. Apr. 9, 2020) (citing numerous cases). Because Waldon has failed to exhaust his administrative remedies, his motion should be denied on that basis alone.

B. Waldon has not identified one or more extraordinary and compelling reasons for compassionate release.

In any event, Waldon’s request for a sentence reduction should be denied because he has not identified “extraordinary and compelling reasons” for which he is eligible to even argue for compassionate release. As explained above, under the relevant provision of § 3582(c), a court can grant a sentence reduction only if it determines that “extraordinary and compelling reasons” justify the reduction and that “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A)(i). The Sentencing Commission’s policy statement defines “extraordinary and compelling reasons” to

include, the medical condition of the defendant,⁸ Waldon doesn't mention his own medical condition; an older defendant with serious health problems,⁹ Waldon doesn't fit within or mention this category; or a defendant who has lost the caregiver to a minor child or spouse,¹⁰ Waldon mentions his mother who either currently has or has recovered from cancer, but since his mother is not child or spouse, her medical condition doesn't fit within this category. Since Waldon fails to allege any extraordinary and compelling reasons as described in USSG § 1B1.13, Application Note 1(A-C), his motion should be denied.

C. USSG §1B1.13 Application Note 1(D) Does Not Apply

Waldon tries to fit his reasons for compassionate release into the "Other Reasons" catch all, USSG § 1B1.13, Application Note 1(D). This catch all is restricted to only those other extraordinary and compelling reasons that are determined by the Director of the Bureau of Prisons as recently held in *United States v. Bryant*, No. 19-14267, 2021 WL 1827158 (11th Cir. May 7, 2021).

Even if the court could consider Waldon's other reasons, none are extraordinary. Waldon claims that he was punished more harshly, than his co-conspirators because he went to trial. Waldon was the ring-leader of the team that robbed and murdered Mr. Safar. He called the shots, including making the fateful decision to eliminate Mr. Safar who had seen his face. Co-conspirator McLaughlin

⁸ USSG § 1B1.13, Application Note 1(A)

⁹ USSG § 1B1.13, Application Note 1(B)

¹⁰ USSG § 1B1.13, Application Note 1(C)

protested Waldon's decision to no avail. Waldon was the one who put the rope around Mr. Safar's neck, choking him into unconsciousness. Judge Adams assessed Waldon's actions, level of culpability, lack of remorse and level of leadership in the criminal organization. Judge Adams sentenced Waldon to three concurrent life sentences for crimes related to the murder of Mr. Safar. It was ordinary, not extraordinary, that the rouge police officer who murdered Mr. Safar, lied to the Grand Jury, committed numerous other serious crimes and showed no remorse, received the longest sentence.

Waldon also claims that pre-*Booker* sentencing is somehow extraordinary. Every defendant sentenced in the time frame of Waldon's case was in a pre-*Booker* category, nothing extraordinary there. It is true that the guidelines would later become advisory, but nothing in the record suggests that Judge Adams would have imposed anything less than life on Waldon.

Waldon's rehabilitation in prison is commendable, but not extraordinary. For starters, every defendant should hopefully take advantage of self-improvement while in prison, many do. That is ordinary. Importantly, even if Waldon's rehabilitation or other good works in prison were considered extraordinary, rehabilitation is not recognized as extraordinary and compelling reason for compassionate release. See USSG § 1B1.13, Application Note 3 and 28 U.S.C. § 994(t).

D. Even if Waldon could establish an extraordinary and compelling reason for compassionate release, the applicable § 3553(a) factors strongly weigh against granting compassionate release.

Waldon's request for a sentence reduction should also be denied because he has failed to demonstrate that he is not a danger to the safety of the community or otherwise merits release under the § 3553(a) factors. Under the applicable policy statement, this Court must deny a sentence reduction unless it determines the defendant "is not a danger to the safety of any other person or to the community." USSG §1B1.13(2). Additionally, this Court must consider the § 3553(a) factors, as "applicable," as part of its analysis. 18 U.S.C. § 3582(c)(1)(A); *United States v. Chambliss*, 948 F.3d 691, 694 (5th Cir. 2020).

Under 18 U.S.C. § 3553(a), the nature and circumstances of the offense, the need for the sentence to reflect the seriousness of the offense(s) and the need to provide just punishment are all factors that clearly support a life sentence. A police officer, becoming a drug dealer, is terrible and merits the harshest of punishment. Waldon was a narcotics detective and had intimate knowledge of the Jacksonville drug scene. Waldon and other officers exploited that knowledge for profit. Waldon used his JSO position to obtain drugs, distribute drugs and avoid detection. Waldon used his position to steal, sometimes handcuffing and pepper spaying his helpless victims. This was an absolute betrayal of the public trust and his oath as an officer.

A police officer who murders an innocent victim for money should never be released from prison. The profit from drug dealing was not enough for Waldon and

he and others plotted to steal money from Mr. Safar. Mr. Safar, a small business owner, was married and the father of a five-year old son at the time he was murdered.

The final moments of Mr. Safar's life are hard to imagine, but necessary to consider when evaluating the severity of Waldon's criminal activity and his danger to society.¹¹ Mr. Safar traveled to the bank on July 3, 1998. He withdrew approximately \$51,000 in cash. This was money he needed for the convenience store and to cash checks for customers. Mr. Safar was pulled over by Waldon. Mr. Safar, obeying the directives of a law enforcement officer, was handcuffed and placed in Waldon's patrol car. As he was driven from one location to another, Mr. Safar watched and heard the exchanges between Waldon and his co-conspirators. Mr. Safar at some point realized that he was in grave danger, begged for his life and even offered more money if Waldon would spare his life. Mr. Safar last memory would be of Waldon climbing into the patrol car, wrapping a rope around his neck. Mr. Safar must have felt the pressure as Waldon pulled the rope tight. Mr. Safar never drew another breath.

At the moment Mr. Safar lost his life, surely something died in Waldon as well. In taking Mr. Safar's life, Waldon took away a husband from his wife and a father from his young son. Simply put, Waldon stole something from the Safar family that can never be repaid.

¹¹ This information is summarized in the PSR.

In all cases, but vitally important in cases where there are real victims, sentencing should be final. On January 30, 2003, when Judge Adams pronounced that Waldon would spend the rest of his life inside a federal prison, that needed to be the final word. Our society depends on the rule of law and the finality of court decisions, especially in sentencing. Mr. Safar's family and the other victims of Waldon should not have to live with the uncertainty that one day, if Waldon's circumstances change, he'll be released. The sentencing of Waldon gave the victims closure, that should not be disturbed.

Our office contacted the Safar family through their legal counsel, Daniel Smith. Mr. Smith spoke to Mr. Safar's brother and relayed a message from him to the court stating that he "opposes any granting of relief to Mr. Waldon, and specifically opposes the relief sought in Mr. Waldon's Motion (Doc. 669) and the Supplement thereto (Doc. 677)."

This Court should deny Waldon's motion for compassionate release based on his failure to exhaust administrative remedies. If this Court were to consider the merits of Waldon's motion, it fails there, too. First, Waldon has not argued permissible "extraordinary and compelling reasons" to support compassionate release; second, Waldon has not met his burden to show that a reduction is warranted in light of the significant danger that he would pose to the community and the 3553(a) factors support his life sentences.

CONCLUSION

For the foregoing reasons, this Court should deny Waldon's motion for compassionate release.

Respectfully submitted,

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U.S. v. Karl Waldon

Case No. 3:00-cr-436-HLA-JBT

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, and I also mailed the foregoing to the following:

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/s/ Frank Talbot

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